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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/769,830

02/02/2004

Gregg Henderson

01A1.1D Henderson

9064

25547

7590

03/10/2005

PATENT DEPARTMENT  
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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/769,830

Applicant(s)

HENDERSON ET AL.

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 25-33, 47-54 and 75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 25, 27, 29, 30, 47-54 and 75 is/are rejected.
- 7) ☐ Claim(s) 26, 28 and 31-33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/2/04</u> | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 47,51,52,54 are rejected under 35 U.S.C. 102(b) as being anticipated by Cazaussus et al (Chromatographia, 1998, 25(10), 865-9). Cazaussus teaches the content of vetiver oil. Cazaussus teaches that two components of vetiver oil are zizanol and bicyclovetivenol. Note that in a claim to a composition, a statement regarding the composition's intended use has no patentable significance.

Claims 25,29,47,48,75 are rejected under 35 U.S.C. 102(b) as being anticipated by Harima et al (JP 08081306; 3/26/96). Harima teaches a cockroach repellent comprising nootkatone. The composition is applied to material to repel cockroaches. See abstract, page 2 paragraph 8, page 7.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 49,50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harima as applied to claims 25,29,47,48,75 above. Harima teaches all that is recited in

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claims 49 and 50 except for the invention comprising the instant amounts of nootkatone. It would have been obvious to one having ordinary skill in the art to determine the optimum amount of nootkatone. One would have been motivated to do this in order to make an invention that would have been most effective in repelling cockroaches.

Claims 25-27,30,47,53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishida et al (JP 09157116; 6/17/97). Ishida teaches an acaricide composition comprising cedrene. Ishida teaches that the composition is used in a method to control (kill) ticks. See abstract. Ishida does not teach the alpha isomer of cedrene. In the absence of unexpected results, it would have been obvious to use any isomeric form of cedrene in the instant invention. One would have been motivated to do this since isomers are known to exhibit similar activity when employed in the same application. Note that in a claim to a composition, a statement regarding the composition's intended use has no patentable significance.

Claims 47,53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato et al (US 5,200,429; 4/6/93). Sato teaches a topical composition comprising cedrene. See abstract, claims. In the absence of unexpected results, it would have been obvious to use any isomeric form of cedrene. One would have been motivated to do this since isomers are known to exhibit similar activity when employed in the same application. Note that in a claim to a composition, a statement regarding the composition's intended use has no patentable significance.

***Other Matters***

Based on claim 75 Applicant appears to have inadvertently left out the phrase "or cockroaches" in claim 25 line 4 after the term "ticks". Please make correction or provide an explanation. Examiner has examined the case as if "or cockroaches" is in claim 25 line 4 after "ticks".

***Claim Objection***

Claims 26,28,31-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach the method of employing the instant compounds for repelling ticks. The prior art does not teach or suggest instant method comprising zizanol and/or bicyclovetivenol.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Alton Pryor', with a stylized flourish at the end.

Alton Pryor  
Primary Examiner  
AU 1616